

Date of Decision : 6th November, 1995.

Special Civil Application No.7448 of 1995

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The Honourable Mr.Justice C.K. THAKKAR.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr.A.D.Padival, Advocate, for the petitioner.

Mr.K.M. Mehta, Assistant Govt. Pleader, instructed by

Mr.D.A. Bambhania, Solicitors to Govt.

Coram : C.K. THAKKAR, J.

( 6th November, 1995 )

Oral Judgment :

This petition is filed by the petitioner for quashing and setting aside the order passed by the respondent-Authorities, refusing to give 6 marks of grace in Paper I of Pre-Service Training Examination. A prayer is also made to set aside an order, terminating his services and by issuing necessary direction, to reinstate the petitioner in service as Junior Clerk by granting continuity in service, with all consequential benefits, including seniority, increment, arrears of salary, and other benefits.

It is the case of the petitioner that he is a handicapped person. In 1984, he was called for interview for the post of Junior Clerk and was selected. He was appointed to the post of Clerk in 1987 in the pay

scale of Rs.950-1500. He successfully completed period of probation. The petitioner had to clear Pre-Service Training Examination in three trials. He appeared in the said Examination in 1989, 1990 and 1991. He, however, failed in all the three examinations. Hence, in accordance with the relevant Rules, the services of the petitioner came to be terminated in 1992. It appears that, after termination, he made an application to grant him fourth chance, i.e. a grace chance. The request made by the petitioner was granted by an order dated October 17, 1994 and the petitioner was allowed to appear at the fourth chance, though meanwhile, his services had already been terminated. The question in this petition relates to passing of Pre-Service Training Examination at the fourth trial. It is an undisputed fact that the petitioner appeared in the examination held in November, 1994 and he obtained following marks in three answer papers :-

1. 39
2. 54
3. 54

Since the petitioner obtained 39 marks in Paper No.1, he was declared failed. The petitioner made representations to the authorities, pointing out that in accordance with Circulars and Resolutions, grace marks ought to have been awarded to him and he ought to have been declared as a successful candidate. In representations, reference was also made regarding family circumstances and the request was made to take sympathetic view. The authorities, however, did not oblige the petitioner as he had failed thrice. So far as fourth trial was concerned, according to the respondents, the petitioner was not entitled to six grace marks and hence, the action taken against the petitioner could not be said to be contrary to law.

Mr.Padival, learned counsel for the petitioner, raised various contentions. He submitted that the respondent-Authorities have committed an error of law apparent on the face of the record in not declaring the petitioner successful at Pre-Service Training Examination. He submitted that misconstruing the relevant provisions of various Circulars and Resolutions, the Authorities held that the petitioner could not get six marks. In one of such Circulars, it was mentioned that if the question paper is of 100 marks, but 10 marks are earmarked for good handwriting and for keeping answer paper neat and clean, a candidate need not get 50 marks for being declared as successful. It would be sufficient if he obtains 45 marks. If a question paper is of 100

marks, without any mark being earmarked for good handwriting and for keeping the answer paper neat and clean, a candidate must get 50% marks for being declared as successful. In this case, according to the learned counsel for the petitioner, the question paper was of 100 marks, but 10 marks were earmarked for good handwriting and for keeping the answer paper neat and clean. In question paper Nos. 2 and 3, obviously, the petitioner was declared successful, inasmuch as he got 54 marks in each of them. In question paper No.1, he obtained only 39 marks. As per the above Circular, he ought to have obtained 45 marks. Thus, there was a deficit of 6 marks. In Resolution dated March 30, 1989, it was stated that in different departmental examinations, many candidates fail due to shortfall of few marks. A question was under the consideration of Government for awarding grace marks. After careful consideration, the Government decided that if such candidates would be failing only in one paper, they would be given maximum 5 marks in that paper. Mr. Bambhania, learned Additional Government Pleader, submitted that the said Circular does not apply to the facts of the present case, as it is applicable to departmental examinations only and admittedly, the petitioner's case is not of departmental examination but of Pre-Service Training Examination. I am not expressing final opinion as to whether or not the said Circular applies in case of Pre-Service Training Examination, as, in my view, even if it is assumed in favour of the petitioner that the said Circular can be invoked, it cannot carry the matter further because, at the most, the petitioner would get five marks, but he would fail even in that case.

But Mr. Padival had an additional argument also. Relying upon Circular, dated December 19, 1979, it was contended that even after grace marks being awarded to a candidate, if he fails, the Head of the Department is entitled to give deficit marks not exceeding two marks. Such decision can be taken by the Head of the Department in the light of facts and circumstances of each case. The counsel contended that effect of conjoint reading of all circulars is that the petitioner would get five marks of grace totalling to 44 (39 + 5). Then, as per the Circular of December 19, 1979, he will get two marks from Head of the Department. Since there was a shortfall of only one mark, had the case of the petitioner been considered in its proper perspective, he would have been declared successful. Unfortunately, however, the case of the petitioner was not considered at all and a communication was sent to him that since there was a deficit of six marks, the petitioner cannot be declared

as successful.

Mr. Bambhania, on the other hand, submitted that the Resolution dated December 19, 1979 would not apply to petitioner's case since it provides for grace marks in case of departmental examination either for retention in service or for promotion to higher post. Again, I may say that I am not expressing final opinion, but in the facts and circumstances of the case, that circular does not help the petitioner.

Reading as a whole, it provides for awarding grace marks in favour of clever students. Under that circular, passing standard is 50%. So, as a normal rule, every candidate must get 50% marks in each individual paper. It may, however, happen that in one subject, a candidate may be weak, though otherwise clever. Then taking into account that fact, such candidate may be given grace marks, considering total marks above 50% and one mark for each per cent of marks would be added to the subject in which there may be shortfall of some marks. For example, if a candidate appears in five subjects and in one, he obtains less than 50 marks, but his overall percentage is 51, 52, 53, 54 or 55 marks, he can be awarded 1, 2, 3, 4 or 5 marks as per the overall percentage of marks obtained by him. The maximum ceiling is five. Thus, if a candidate obtains 60% or 65% of marks, he will not be entitled to more than five marks of grace. Considering the above facts, the Government thought it proper that even after getting grace marks to the maximum of five if a candidate fails for one or two marks, the Head of the Department in exercise of discretion may award one or two marks in his favour. The said resolution, thus, takes care of those students, who are otherwise brilliant and who obtain not less than 55% of marks as it would apply only to those cases, in which a candidate obtains maximum five marks and yet, fails for one or two marks. That circular does not apply to the petitioner as the petitioner has obtained 49% marks only. For the aforesaid reasons, in my opinion, the petitioner cannot claim six marks and the action taken by the respondent-authorities of declaring him unsuccessful cannot be said to be contrary to law.

Again, the services of the petitioner came to be terminated in 1992. It was only by way of an additional chance that the petitioner was allowed to appear and even in that examination, he failed. Hence, it cannot be said that any error has been committed by the respondent-authorities. I, therefore, do not find any substance in any of the arguments advanced by the learned counsel for the petitioner and the petition requires to

be dismissed. Accordingly, the petition is dismissed.  
Rule is discharged. No order as to costs.

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(apj)